

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Simon Wang	Team: Squad #7	CCRB Case #: 201709495	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 11/07/2017 9:00 AM	Location of Incident: 270 West 70th Street	Precinct: 20	18 Mo. SOL 5/7/2019	EO SOL 5/7/2019	
Date/Time CV Reported Mon, 11/13/2017 9:43 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 11/13/2017 9:43 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Randy Balcacer	09020	947714	TB DT12
2. SGT David Shimshi	02544	892639	020 PCT
3. SGT Jesus Delacruz	2473	930018	020 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Randy Balcacer	Abuse: Police Officer Randy Balcacer stopped § 87(2)(b)	
B.SGT Jesus Delacruz	Abuse: Sergeant Jesus Delacruz forcibly removed § 87(2)(b) to the hospital.	
C.SGT David Shimshi	Abuse: Sergeant David Shimshi forcibly removed § 87(2)(b) to the hospital.	
D.SGT David Shimshi	Abuse: Sergeant David Shimshi threatened § 87(2)(b) with the use of force.	

Case Summary

On November 13, 2017, § 87(2)(b) filed the following complaint with the CCRB. On November 7, 2017, at 9:00 a.m., § 87(2)(b) went to vote at her polling place at 270 West 70th Street in Manhattan. § 87(2)(b) wrote the names of judicial nominees on a piece of paper. § 87(2)(b) a voting coordinator, told § 87(2)(b) that she was not permitted to remove voting material from the poll site. PO Randy Balcacer of Transit Bureau District 12 was assigned to security at the poll site. PO Balcacer placed § 87(2)(b) in handcuffs and called for a supervisor to come to the location (**Allegation A – Abuse of Authority:** § 87(2)(g) Sgt. David Shimshi and Sgt. Jesus Delacruz of the 20th Precinct responded to the location. Sgt. Shimshi and Sgt. Delacruz determined that § 87(2)(b) should be removed to the hospital as an Emotionally Disturbed Person (**Allegations B and C – Abuse of Authority:** § 87(2)(g) An ambulance arrived and § 87(2)(b) was placed inside. While inside the ambulance, § 87(2)(b) removed one of her hands from the handcuffs. Sgt. Shimshi placed § 87(2)(b)'s hand back into the handcuffs. While doing this, Sgt. Shimshi allegedly told § 87(2)(b) “I’ll break your arm if I have to.” (**Allegation D – Abuse of Authority:** § 87(2)(g) § 87(2)(b) was transported to § 87(2)(b) Hospital and was discharged after an evaluation. She was not treated for any physical injuries.

There were no videos of this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Randy Balcacer stopped § 87(2)(b)

§ 87(2)(b) went to her polling site at 270 West 70th Street to vote. After filling out her ballot, § 87(2)(b) stopped at a table near the voting machines and began to write down the names of judicial nominees onto a piece of paper. § 87(2)(b) a polling coordinator for the Board of Elections, approached § 87(2)(b) and told her she was not allowed to do that. § 87(2)(b) followed § 87(2)(b) as she consulted other staff to determine whether there was any rule against writing down any names from the ballot because she did not appear to be certain of the rules. In her CCRB statement (**Board Review 1**), § 87(2)(b) alleged that without warning or provocation, PO Balcacer grabbed § 87(2)(b) and handcuffed her. § 87(2)(b) stated she did not recall how she was grabbed because she was in shock. In a letter § 87(2)(b) wrote to the Board of Elections (**Board Review 2**), § 87(2)(b) wrote that she was “tackled” by the police, but later in the letter she stated that PO Balcacer “grabbed” her “forcefully” and handcuffed her. In her notice of claim (**Board Review 3**), § 87(2)(b) stated that a police officer was “suddenly on top of me, twisting my arms and forcefully handcuffing me.” § 87(2)(b) stated that she yelled, “Stop it. You’re hurting me. You’re hurting me.” § 87(2)(b) did not claim to have suffered any physical injuries as a result of PO Balcacer.

§ 87(2)(b) stated (**Board Review 4**) that she has been working at the same poll site for 12 years and that § 87(2)(b) has been frequently disruptive at the poll site in the past by yelling at poll workers, refusing to wait in line, grabbing ballots and other paperwork. On November 7, 2017, § 87(2)(b) observed § 87(2)(b) rip up her ballot sheet and begin writing down names of candidates from the ballot. § 87(2)(b) approached § 87(2)(b) and told her that she would not

be allowed to remove that paper from the poll site. § 87(2)(b) allegedly yelled at § 87(2)(b) “Ah shut up” and demanded that § 87(2)(b) show her the rule. § 87(2)(b) told PO Balcacer, “Officer please, she can’t leave.” PO Balcacer repeatedly told § 87(2)(b) “Please calm down.” § 87(2)(b) continued to yell and attempted to walk out of the poll station. § 87(2)(b) told PO Balcacer, “Whatever happens, she cannot leave with that paper.” PO Balcacer told § 87(2)(b) that he had no choice but to restrain her. § 87(2)(b) flailed her arms and kicked at the officer, knocking off his tie. PO Balcacer grabbed § 87(2)(b)’s arms and handcuffed her. In a written report to the Board of Elections (**Board Review 5**), § 87(2)(b) provided a narrative which was generally consistent with her CCRB statement. In the report, she also mentioned that § 87(2)(b) was behaving aggressively upon first receiving her ballot as well, which caused PO Balcacer to approach but take no action. § 87(2)(b) added that she called the Board of Elections during the incident to obtain confirmation of the rules and informed PO Balcacer of the rules. After this, PO Balcacer attempted to stop § 87(2)(b) from leaving with the defaced ballot.

PO Balcacer was assigned to patrol the poll site on foot. His duties were to maintain order at the poll site. PO Balcacer stated (**Board Review 6**) that § 87(2)(b) drew his attention by calling out to him from across the room. PO Balcacer approached her and she informed him that § 87(2)(b) was writing the names of nominees onto a ballot paper. § 87(2)(b) stated, “She can’t do that.” § 87(2)(b) repeatedly yelled at § 87(2)(b) “Where does it say that? Where does it say that?” § 87(2)(b) then ripped off a piece of the ballot and attempted to walk out of the polling site. § 87(2)(b) again told PO Balcacer that she was not allowed to do that. PO Balcacer stated that he was not familiar with elections rules and relied on § 87(2)(b)’s authority as a polling coordinator that § 87(2)(b) was violating elections rules. PO Balcacer grabbed § 87(2)(b) by her arms and pulled them behind her back and handcuffed her. PO Balcacer then called for backup and a supervisor to come to the scene. He stated that he intended for a supervisor to determine what was to be done with § 87(2)(b).

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, they engage in violent, tumultuous or threatening behavior, make unreasonable noise, use abusive or obscene language in a public place, or disturb any lawful assembly or meeting of persons. NY Penal Law, Section 240.20 (**Board Review 7**). The validity of a disorderly conduct charge rests significantly on the whether there is proof of public harm. Many factors are considered in a contextual analysis including, the time and place of the event, the nature of the conduct, and the presence of other people in the vicinity. People v Baker, 20 N.Y.3d 354 (2013) (**Board Review 14**).

An allegation of force is not pleaded against PO Balcacer because § 87(2)(b) did not allege that she was “tackled” in her CCRB statement and her vague description of being “grabbed” and handcuffed did not arise to the level of an allegation of excessive force.

§ 87(2)(b), § 87(2)(g)

Allegation (B) Abuse of Authority: Sergeant Jesus Delacruz forcibly removed § 87(2)(b) to the hospital.

Allegation (C) Abuse of Authority: Sergeant David Shimshi forcibly removed § 87(2)(b) to the hospital.

§ 87(2)(b) stated that shortly after she was handcuffed, a group of uniformed police officers arrived at the poll site. § 87(2)(b) denies that any police officer attempted to speak to her about the incident. § 87(2)(b) asked the officers whether she was being arrested and received no response. § 87(2)(b) asked three or four times what she had done wrong and heard an officer she could not describe mumble “disorderly conduct.” Another officer she could not describe stated, “interfering with a poll worker.” She claimed Sgt. Shimshi told her, “I’ve been doing this for 30 years. You know what you did.” § 87(2)(b) was informed that EMS was on the way and believed that she was being taken for a psychiatric evaluation. § 87(2)(b) stated that at the hospital she was made to wait for approximately three hours before a nurse asked her a series of questions and discharged her.

Sgt. Shimshi and Sgt. Delacruz both arrived at the poll site in response to PO Balcacer’s call over the radio. They both stated that they arrived to find § 87(2)(b) in handcuffs with PO Balcacer. Both Sgt. Shimshi and Sgt. Delacruz stated that they deemed § 87(2)(b) to have been an Emotionally Disturbed Person. Both Sgt. Delacruz and Sgt. Shimshi stated that they asked PO Balcacer what had occurred and that PO Balcacer informed them that § 87(2)(b) had attempted to leave the polling site with a ballot and had ignored PO Balcacer’s warnings to leave the ballot.

Sgt. Shimshi, who has been a member of the NYPD for 30 years, stated (**Board Review 8**) that while he was present, § 87(2)(b) was yelling, “I can take things out of here. You can’t stop me from doing these things. It’s a free country.” Sgt. Shimshi stated that this behavior led him to believe that § 87(2)(b) was not behaving like a rational person. Sgt. Shimshi believed that § 87(2)(b) would become violent towards the staff at the polling site, but did not provide a reason for this belief. Sgt. Shimshi stated that both he and Sgt. Delacruz determined § 87(2)(b) to have been an EDP. He stated that he believed that § 87(2)(b) needed a psychiatric evaluation and he, “did not see a reason to arrest her for violation of election law.”

Sgt. Delacruz stated (**Board Review 9**) that he attempted to speak to § 87(2)(b) who had a hoodie over her head and refused to speak to him or make eye contact. § 87(2)(b) refused to answer questions regarding her identity and address. At times, she would yell, “Get off me.” Based on this he believed that § 87(2)(b) was not behaving like a “normal person.” Sgt. Delacruz believed § 87(2)(b) was a danger to herself because in her state of mind, she would walk into traffic.

The AIDED report (**Board Review 10**) for § 87(2)(b) stated that § 87(2)(b) broke the rules of the Board of Elections at polling site, which prompted staff to ask her to leave. § 87(2)(b) then became “irate and was cursing and screaming,” prompting PO Balcacer to intervene. § 87(2)(b)

continued to “act disorderly” PO Balcacer handcuffed § 87(2)(b) and she was removed to the hospital.

A person is considered to be emotionally disturbed when he or she appears to be mentally ill or temporarily deranged and is conducting himself or herself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others. Patrol Guide, Section 221-13 (**Board Review 11**).

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Allegation (D) Abuse of Authority: Sergeant David Shimshi threatened § 87(2)(b) with the use of force.

It is undisputed that § 87(2)(b) slipped a hand from her handcuffs while she was inside the ambulance.

After § 87(2)(b) sat down inside the ambulance, she slipped her left hand from her handcuffs in order to pull her hoodie over her head. Sgt. Shimshi and other unidentified officers entered the ambulance and placed her hands back into handcuffs. While § 87(2)(b) was in a seated position, they pushed her torso down towards her knees in order to access her hands. § 87(2)(b) stated that she could not tell what the officers were doing to her arms. § 87(2)(b) yelled to Sgt. Shimshi that he was hurting her arm. He allegedly responded by saying, “I’ll break your arm if I have to.”

Sgt. Shimshi stated that § 87(2)(b)’s handcuffs had been closed over her jacket sleeves at the wrists, which allowed her to slip her hand from the handcuffs. He held her arms together while other officers closed the handcuffs. Sgt. Shimshi believed PO Balcacer was one of the officers who assisted him, but he could not recall who the other officer was. Sgt. Shimshi stated that § 87(2)(b)

§ 87(2)(b) was yelling, “You’re hurting me. You’re hurting me.” He stated that he wasn’t using any force against § 87(2)(b) besides holding her arms and denied that he told § 87(2)(b) “I’ll break your arms if I have to.”

Sgt. Delacruz and PO Balcacer both stated that they did not observe Sgt. Shimshi put § 87(2)(b) back into handcuffs. Sgt. Delacruz stated that he heard someone mention that § 87(2)(b) had slipped out of handcuffs and had to be placed back into handcuffs, but did not witness any part of this. PO Balcacer stated he was not aware of § 87(2)(b) slipping out of handcuffs.

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first and only CCRB complaint to which § 87(2)(b) has been a party (**Board Review 12**).
- PO Balcacer has been a member of service for nine years and has been a subject in one other complaint involving two allegations filed, neither of which were substantiated. His § 87(2)(g)
- Sgt. Delacruz has been a member of service for 15 years and this is the first CCRB complaint to which he has been a subject.
- Sgt. Shimshi has been a member of service for 31 years and has been a subject in seven other complaints involving 14 allegations, of which one was substantiated.
 - 201108090 involved a substantiated allegation of discourteous language against Sgt. Shimshi. The Board recommended Command Discipline and a penalty of Command Discipline B was imposed.
 - § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- § 87(2)(b) filed a notice of claim with the City of New York claiming injury to her wrists, forearms, head, forehead, back and mental anguish, and seeking \$75,000 as redress. A 50H hearing has not been scheduled (**Board Review 3**).
- According to the Office of Court Administration, § 87(2)(b) has no history of convictions in New York City (**Board Review 13**).

Squad No.: 7

Investigator: _____ Inv. Simon Wang _____
Signature Print Title & Name Date

Squad Leader: _____

	Signature	Print Title & Name	Date
Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date